

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 773

Introduced by Assembly Member Lieu

February 26, 2009

An act to amend Sections 1424 and 1424.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 773, as amended, Lieu. Health facilities: fines.

Under existing law, the Long-Term, Health, Safety, and Security Act of 1973; the State Department of Public Health administers various requirements pertaining to long-term health care facilities. Violation of these provisions is punishable by various classes of administrative citations with corresponding administrative penalties. A class "B" citation is subject to a civil penalty in an amount not less than \$100 and not exceeding \$1,000 for each and every citation. A class "AA" citation at a skilled nursing facility is subject to a civil penalty in an amount not less than \$25,000 and not exceeding \$100,000 for each and every citation, and a class "A" citation in a skilled nursing facility is subject to a civil penalty in an amount not less than \$2,000 and not exceeding \$20,000 for each and every citation.

This bill would increase the fine for a class "B" citation at a long-term health care facility to an amount not less than \$1,000 and not more than \$5,000 for each citation. The bill would also increase the fine for a class "AA" citation at a skilled nursing facility to an amount not less than \$50,000 and not more than \$125,000 for each citation, and the fine for a class "A" citation at a skilled nursing facility to an amount not less than \$5,000 and not more than \$50,000 for each citation.

The bill would also require, within 30 days of the issuance of a class “AA” or class “A” violation citation, that the cited facility send written notification to the last known address of the primary contact for all current residents and patients, as specified. The bill would allow the department to assess an administrative penalty of \$1,000 per day for each day following the end of the 30-day notification period, but would permit the department to waive or lower the penalty if it finds that the facility has made its best efforts to comply with the notification requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Senior citizens represent a large portion of California’s
4 population; they include our aging mothers, fathers, grandparents,
5 siblings, friends, and other loved ones. It is our responsibility as
6 a state to ensure the highest quality of life and care for our seniors
7 during their golden years.

8 (b) On September 29, 2008, the United States Department of
9 Health and Human Services Office of Inspector General released
10 a report entitled “Trends in Nursing Home Deficiencies and
11 Complaints.” In the report, the Inspector General found that 99.1
12 percent of California nursing homes were cited over the past three
13 years with deficiencies, a rate that is higher than the national
14 average. The report makes it clear that improved quality of care
15 for nursing home residents must be a priority.

16 (c) While adequate advocacy and representation is important
17 to all California seniors, it is especially important for those who
18 reside in a care facility. Many seniors in care facilities are
19 particularly vulnerable because they have no friends or family who
20 visit or advocate for them. The mission of the State Ombudsman
21 Program is to investigate elder abuse and other complaints on
22 behalf of the 250,000 California residents living in skilled nursing
23 facilities. In 2008, state funding was reduced from this vital
24 program, leaving many residents without resources to report abuse,
25 fraud, or neglect.

1 (d) It is imperative that we continuously strive to improve
2 nursing home care in California. As our population of aging
3 residents increases, delinquency rates in nursing facilities become
4 more frequent, and budget constraints limit advocacy programs,
5 it is necessary to ensure the highest quality care and service to our
6 state's most vulnerable population.

7 SEC. 2. Section 1424 of the Health and Safety Code is amended
8 to read:

9 1424. Citations issued pursuant to this chapter shall be
10 classified according to the nature of the violation and shall indicate
11 the classification on the face thereof.

12 (a) In determining the amount of the civil penalty, all relevant
13 facts shall be considered, including, but not limited to, the
14 following:

15 (1) The probability and severity of the risk that the violation
16 presents to the patient's or resident's mental and physical condition.

17 (2) The patient's or resident's medical condition.

18 (3) The patient's or resident's mental condition and his or her
19 history of mental disability or disorder.

20 (4) The good faith efforts exercised by the facility to prevent
21 the violation from occurring.

22 (5) The licensee's history of compliance with regulations.

23 (b) Relevant facts considered by the department in determining
24 the amount of the civil penalty shall be documented by the
25 department on an attachment to the citation and available in the
26 public record. This requirement shall not preclude the department
27 or a facility from introducing facts not listed on the citation to
28 support or challenge the amount of the civil penalty in any
29 proceeding set forth in Section 1428.

30 (c) Class "AA" violations are violations that meet the criteria
31 for a class "A" violation and that the state department determines
32 to have been a direct proximate cause of death of a patient or
33 resident of a long-term health care facility. Except as provided in
34 Section 1424.5, a class "AA" citation is subject to a civil penalty
35 in the amount of not less than five thousand dollars (\$5,000) and
36 not exceeding twenty-five thousand dollars (\$25,000) for each
37 citation. In any action to enforce a citation issued under this
38 subdivision, the department shall prove all of the following:

39 (1) The violation was a direct proximate cause of death of a
40 patient or resident.

1 (2) The death resulted from an occurrence of a nature that the
2 regulation was designed to prevent.

3 (3) The patient or resident suffering the death was among the
4 class of persons for whose protection the regulation was adopted.

5 If the department meets this burden of proof, the licensee shall
6 have the burden of proving that the licensee did what might
7 reasonably be expected of a long-term health care facility licensee,
8 acting under similar circumstances, to comply with the regulation.

9 If the licensee sustains this burden, then the citation shall be
10 dismissed.

11 Except as provided in Section 1424.5, for each class “AA”
12 citation within a 12-month period that has become final, the
13 department shall consider the suspension or revocation of the
14 facility’s license in accordance with Section 1294. For a third or
15 subsequent class “AA” citation in a facility within that 12-month
16 period that has been sustained following a citation review
17 conference, the department shall commence action to suspend or
18 revoke the facility’s license in accordance with Section 1294.

19 (d) Class “A” violations are violations which the department
20 determines present either (1) imminent danger that death or serious
21 harm to the patients or residents of the long-term health care facility
22 would result therefrom, or (2) substantial probability that death or
23 serious physical harm to patients or residents of the long-term
24 health care facility would result therefrom. A physical condition
25 or one or more practices, means, methods, or operations in use in
26 a long-term health care facility may constitute a class “A” violation.
27 The condition or practice constituting a class “A” violation shall
28 be abated or eliminated immediately, unless a fixed period of time,
29 as determined by the department, is required for correction. Except
30 as provided in Section 1424.5, a class “A” citation is subject to a
31 civil penalty in an amount not less than one thousand dollars
32 (\$1,000) and not exceeding ten thousand dollars (\$10,000) for each
33 and every citation.

34 If the department establishes that a violation occurred, the
35 licensee shall have the burden of proving that the licensee did what
36 might reasonably be expected of a long-term health care facility
37 licensee, acting under similar circumstances, to comply with the
38 regulation. If the licensee sustains this burden, then the citation
39 shall be dismissed.

1 (e) Class “B” violations are violations that the department
2 determines have a direct or immediate relationship to the health,
3 safety, or security of long-term health care facility patients or
4 residents, other than class “AA” or “A” violations. Unless
5 otherwise determined by the department to be a class “A” violation
6 pursuant to this chapter and rules and regulations adopted pursuant
7 thereto, any violation of a patient’s rights as set forth in Sections
8 72527 and 73523 of Title 22 of the California Code of Regulations,
9 that is determined by the department to cause or under
10 circumstances likely to cause significant humiliation, indignity,
11 anxiety, or other emotional trauma to a patient is a class “B”
12 violation. A class “B” citation is subject to a civil penalty in an
13 amount not less than one thousand dollars (\$1,000) and not
14 exceeding five thousand dollars (\$5,000) for each and every
15 citation. A class “B” citation shall specify the time within which
16 the violation is required to be corrected. If the department
17 establishes that a violation occurred, the licensee shall have the
18 burden of proving that the licensee did what might reasonably be
19 expected of a long-term health care facility licensee, acting under
20 similar circumstances, to comply with the regulation. If the licensee
21 sustains this burden, then the citation shall be dismissed.

22 In the event of any citation under this paragraph, if the
23 department establishes that a violation occurred, the licensee shall
24 have the burden of proving that the licensee did what might
25 reasonably be expected of a long-term health care facility licensee,
26 acting under similar circumstances, to comply with the regulation.
27 If the licensee sustains this burden, then the citation shall be
28 dismissed.

29 (f) (1) Any willful material falsification or willful material
30 omission in the health record of a patient of a long-term health
31 care facility is a violation.

32 (2) “Willful material falsification,” as used in this section, means
33 any entry in the patient health care record pertaining to the
34 administration of medication, or treatments ordered for the patient,
35 or pertaining to services for the prevention or treatment of
36 decubitus ulcers or contractures, or pertaining to tests and
37 measurements of vital signs, or notations of input and output of
38 fluids, that was made with the knowledge that the records falsely
39 reflect the condition of the resident or the care or services provided.

(3) “Willful material omission,” as used in this section, means the willful failure to record any untoward event that has affected the health, safety, or security of the specific patient, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(g) Except as provided in subdivision (a) of Section 1425.5, a violation of subdivision (f) may result in a civil penalty not to exceed ten thousand dollars (\$10,000), as specified in paragraphs (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) or more than ten thousand dollars (\$10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars (\$2,500).

(2) Where the penalty assessed is one thousand dollars (\$1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “B” violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars (\$1,000), or for skilled nursing facilities or intermediate care facilities as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, in excess of two thousand dollars (\$2,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class “A” violation, and shall include the right of appeal as specified in Section 1428.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the department from issuing a class “A” or class “B” citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class “A” or class “B” violation and as a violation of this subdivision.

1 (h) Where the licensee has failed to post the notices as required
2 by Section 9718 of the Welfare and Institutions Code in the manner
3 required under Section 1422.6, the department shall assess the
4 licensee a civil penalty in the amount of one hundred dollars (\$100)
5 for each day the failure to post the notices continues. Where the
6 total penalty assessed is less than two thousand dollars (\$2,000),
7 the violation shall be issued and enforced in the same manner as
8 a class “B” violation, and shall include the right of appeal as
9 specified in Section 1428. Where the assessed penalty is equal to
10 or in excess of two thousand dollars (\$2,000), the violation shall
11 be issued and enforced in the same manner as a class “A” violation
12 and shall include the right of appeal as specified in Section 1428.
13 Any fines collected pursuant to this subdivision shall be used to
14 fund the costs incurred by the California Department of Aging in
15 producing and posting the posters.

16 (i) The director shall prescribe procedures for the issuance of a
17 notice of violation with respect to violations having only a minimal
18 relationship to patient safety or health.

19 (j) (1) The department shall provide a copy of all citations
20 issued under this section to the affected residents whose treatment
21 was the basis for the issuance of the citation, to the affected
22 residents’ designated family member or representative of each of
23 the residents, and to the complainant if the citation was issued as
24 a result of a complaint.

25 (2) *Within 30 days of the issuance of a citation for a class “AA”*
26 *or class “A” violation, the cited facility shall send written*
27 *notification to the last known address of the primary contact for*
28 *all current residents and patients. The notice shall disclose the*
29 *violation for which the citation was issued, the date of the citation,*
30 *a telephone number or Internet Web site address for the department*
31 *where more information on the citation may be accessed. If the*
32 *facility is appealing the citation, the notice may also include that*
33 *fact. If the facility fails to send the notifications pursuant to this*
34 *paragraph, the department may assess an administrative penalty*
35 *of one thousand dollars (\$1,000) for each day following the end*
36 *of the 30-day period. The department may waive or lower the*
37 *penalty if it finds that the facility has made its best efforts to comply*
38 *with this paragraph.*

(k) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(l) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities.

SEC. 3. Section 1424.5 of the Health and Safety Code is amended to read:

1424.5. (a) In lieu of the fines specified in subdivisions (c), (d), and (e) of Section 1424, fines imposed on skilled nursing facilities or intermediate care facilities, as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

(1) A class “AA” citation is subject to a civil penalty in an amount not less than fifty thousand dollars (\$50,000) and not exceeding one hundred twenty-five thousand dollars (\$125,000) for each and every citation. For a second or subsequent class “AA” citation in a skilled nursing facility or intermediate care facility within a 24-month period that has been sustained following a citation review conference, or where the licensee has chosen not to exercise its right to a citation review conference, the state department shall commence action to suspend or revoke the facility’s license in accordance with Section 1294.

(2) A class “A” citation is subject to a civil penalty in an amount not less than five thousand dollars (\$5,000) and not exceeding fifty thousand dollars (\$50,000) for each and every citation.

(3) Any “willful material falsification” or “willful material omission,” as those terms are defined in subdivision (f) of Section 1424, in the health record of a resident is subject to a civil penalty in an amount not less than two thousand dollars (\$2,000) and not exceeding twenty thousand dollars (\$20,000) for each and every citation.

(b) A licensee may, in lieu of contesting a class “AA” or class “A” citation pursuant to Section 1428, transmit to the state department, the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for

- 1 each violation, within 30 business days after the issuance of the
- 2 citation.

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